U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

JUN 18 2001

File: [redacted] Office: CIUDAD JUAREZ, MEXICO Date:

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(B)(v)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, [redacted] Mexico, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico who was found by a consular officer to be inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of more than one year. The applicant married a naturalized United States citizen in 1998 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to travel to the United States to reside with his spouse.

The officer in charge also found the applicant inadmissible to the United States under § 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. 1182(a)(9)(C)(i)(II), for having entered the United States after deportation or removal. The officer in charge then concluded that the applicant was statutorily ineligible to file an application for waiver of inadmissibility and denied the application. No alien registration number is noted on the officer in charge's denial of the applicant's waiver request.

On appeal, the applicant's spouse states that she has enclosed letters and receipts of expenses, but the only attachment contained in the record is a letter from an unrelated case.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

(1) Notice of Entry of Appearance as Attorney (Form G-28).

(2) Brief, statement, and/or supporting evidence.

(3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).

(4) Decision.

(5) Notice of intent to take adverse action and response.

(6) Investigative reports and/or other derogatory information.

(7) Application or petition (Form I-601).

(8) Evidence in support of application or petition.

As constituted, the record fails to contain evidence to support of the officer in charge's finding that the applicant is ineligible for admission under § 212(a)(9)(C)(i)(II). Therefore, the decision of the officer in charge will be withdrawn.

It should also be noted that Service instructions at O.I. 212.7 specify that an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The operations instruction also provides that after receipt by a Service office, if grounds of inadmissibility other than those for which the waiver is sought are discovered, the application and all relating documents should be returned to the consular officer for reconsideration.

The appeal of the officer in charge's decision will be rejected and the record remanded to him for further action. If a decision is rendered which would be adverse to the applicant, the officer in charge will certify his decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.

ORDER: The appeal is rejected. The district director's decision is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.